

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

IN RE:

KEVIN L. TRENT,

Debtor.

**Case No. 3:19-bk-31431-SHB
Chapter 7**

**STEWART & WHEELER, P.C.'S MOTION TO QUASH
HOMETRUST BANK'S SUBPOENA**

NOTICE OF HEARING

Notice is hereby given that:

A hearing will be held on Stewart & Wheeler, P.C.'s Motion to Quash Subpoena on October 3, 2019 at 9:00 a.m., before the Honorable Suzanne H. Bauknight in courtroom 1C at the Howard H. Baker, Jr. Courthouse, 800 Market Street, Knoxville, Tennessee 37902.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief requested, you or your attorney must attend this hearing. If you do not attend the hearing, the court may decide that you do not oppose Movant's Motion to Quash or Modify HomeTrust Bank's Subpoena to Stewart & Wheeler, P.C., and may enter an order granting that relief.

Stewart & Wheeler, P.C. ("S&W"), pursuant to Bankruptcy Rule of Procedure 9016 and Federal Rule of Civil Procedure 45(d), respectfully requests the Court to quash the subpoena purportedly served on S&W by creditor HomeTrust Bank ("HomeTrust") for production of documents, information, or objects related to Debtor and several additional individuals and entities identified as "Related Parties" in the subpoena, including Gary Wyatt, Trent-Wyatt

Excavating, LLC, Trent Excavating, LLC, Trent Properties, LLC, Terri D. Wyatt aka “Terrie” D. Wyatt individually, Julianna R. Trent, individually, Trent Earthworks, LLC and G.W. Wyatt Contracting, LLC. As grounds for this Motion to Quash, S&W states the following:

RELEVANT BACKGROUND

S&W hereby incorporates by reference the statements contained in the “Introduction” section of the Motion to Quash or Modify HomeTrust Bank’s Subpoena to Stewart & Wheeler, P.C. filed by Roger Trent, Trent Properties, and Trent Earthworks, LLC (collective “Roger Trent and Trent Entities”) on August 27, 2019. [Doc. 115 at pp. 2-3]. S&W was purportedly served by HomeTrust with the subpoena at issue by certified mail on August 9, 2019. [Doc. 86]. The time for compliance specified in the subpoena is September 6, 2019 at 10:00 a.m. [Id.].

LAW AND ARGUMENT

1. S&W has not been properly served with the subpoena.

Bankruptcy Rule 9016 makes Federal Rule of Procedure 45 applicable to certain bankruptcy proceedings. The subpoena at issue purports to be served pursuant to Fed. R. Civ. P. 45. [Doc. 86]. Notably, the proof of service on the subpoena states that the subpoena was served “[b]y U.S. Mail, Certified Mail, Return Receipt Requested” at S&W’s P.O. Box. Although the Sixth Circuit has not specifically addressed this issue, a majority of courts have adopted the position that “delivering” a subpoena requires personal service. *See, e.g., OceanFirst Bank v. Hartford Fire Ins. Co.*, 794 F. Supp. 2d 752, 753 (E.D. Mich. 2011) (“The Sixth Circuit has not addressed whether Rule 45 requires personal service; however, the Fifth, Ninth, and D.C. Circuits have held that personal service is required.”) *citing Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, 705 (5th Cir. 2003); *Chima v. United States Dep’t of Defense*, 23 Fed. App’x.

721, 724 (9th Cir. 2001); *FTC v. Copmagnie De Saint-Gobain-Pon-A-Mousson*, 636 F.2d 1300, 1312-13 (D.C. Cir. 1980).

“A majority of lower courts also have held that Rule 45 requires personal service.” *OceanFirst Bank*, 794 F. Supp. 2d at 753. “The longstanding interpretation of Rule 45 has been that personal service of subpoenas is required.” 9A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2454, at 397 (3d ed. 2008). The United States District Court for the Eastern District of Tennessee has also recently cited this majority position with approval. *See Adkisson v. Jacobs Eng’g Grp., Inc.*, No. 3:13-CV-505-TAV-HBG, 2018 U.S. Dist. LEXIS 176711, at *13-14 (E.D. Tenn. Oct. 15, 2018). Because HomeTrust failed to personally serve S&W with the subpoena, the subpoena should be quashed and S&W should be relieved from any obligation to respond to the subpoena.

2. S&W joins in the arguments raised in the Motion to Quash filed by Roger Trent and the Trent Entities.

S&W hereby joins in and incorporates by references the arguments asserted in the Motion to Quash or Modify HomeTrust Bank’s Subpoena to Stewart & Wheeler, P.C. filed by Roger Trent and the Trent Entities on August 27, 2019. [Doc. 115]. S&W respectfully requests the Court to enter an order quashing the subpoena and relieving S&W from any obligation to respond to the subpoena. A proposed order is filed contemporaneously herewith.

Respectfully submitted this 30th day of August 2019.

s/M. Edward Owens, Jr., Esq.
M. Edward Owens, Jr., Esq. (BPR #007159)
eowens@lewisthomas.com

LEWIS, THOMASON, KING, KRIEG & WALDROP, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901
(865) 546-4646

Attorneys for Subpoena Recipient Stewart & Wheeler, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of August, 2019, a copy of the foregoing Stewart & Wheeler, P.C.'s Motion to Quash HomeTrust Bank's Subpoena was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. The foregoing pleading was also served upon the parties listed below by placing the same in the U.S. Mail, postage prepaid, or by e-mail as indicated. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

<input type="checkbox"/> Hand <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input type="checkbox"/> E-mail	U.S. Trustee's Office 800 Market Street, Suite 114 Knoxville, TN 37919	<input type="checkbox"/> Hand <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Mark A. Pinkston, Esq. James David Nave, Esq. Van Winkle, Buck, Wall, Starnes and Davis, P.A. 11 North Market Street P.O. Box 7376 Asheville, NC 28802 mpinkston@vwlawfirm.com dnave@vwlawfirm.com <i>Attorneys for HomeTrust Bank</i>
<input type="checkbox"/> Hand <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Dean B. Farmer, Esq. James F. Parker, Esq. Hodges, Doughty & Carson, PLLC 617 W. Main Street Knoxville, TN 37902 dfarmer@hdclaw.com jparker@hdclaw.com <i>Attorneys for Roger Trent, Trent Properties and Trent Earthworks, LLC</i>	<input type="checkbox"/> Hand <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> EFS <input checked="" type="checkbox"/> E-mail	Ryan Jarrard, Esq. Quist, Fitzpatrick & Jarrard, PLLC 800 S. Gay Street 2121 First Tennessee Plaza Knoxville, TN 37929 rej@qcflaw.com <i>Attorney for Kevin L. Trent</i>

s/M. Edward Owens, Jr., Esq.
M. Edward Owens, Jr., Esq. (BPR #007159)